

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4487 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

SWAMI VIVEKANAND EDUCATION TRUST THRO' MANAGING TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR. S.T. MEHTA, GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 20/11/97

ORAL JUDGEMENT

Placing reliance upon the fact situation regarding the presence of the students, and upon the decision of this Court in Special Civil Application No. 8165 of 1996 decided on February 02, 1997, ld. counsel for the Petitioner Ms. Sejal Mandavia urges that the present petition requires a full recognition.

The facts are not much in dispute. The Petitioner happens to be a Trust conducting a school at Umarla under Veraval taluka of Junagadh district. The grant equivalent to 25 % for the year 1995-96 has been ordered to be reduced on the ground that, when the representative of the Department had visited the school on 1st. August 1995 and again on 25th. August 1995 very many students were absent. The contention in this respect coming from ld. counsel for the petitioner is that, on 1st. August, 1995 against the admitted strength of the students namely 215, 67 students were found to be present. But according to ld. counsel, this had happened because the area was under heavy rains during those days. On August 25, 1995, out of 215 students, it is said that 69 students were found to be present. But this stand taken by the Respondents does not appear to be a correct case. On that day in presence of the representative of the Respondents, the presence of the students were marked and it is clearly born out from Annexure-E that the say of the Respondents in the communication Annexure-A is not correct. It appears that, not, only 69 students, but in fact 186 students were present on that day. Thus it appears very clearly that the say of the Respondents regarding the presence of the students on August 25, 1995 does not appear to be correct.

If the above said situation is accepted, the concentration shall have to be on the presence of August 01, 1995. But as rightly been contended by ld. counsel Ms. Mandavia and accepted by this Court in the aforementioned decision, the average of the presence of the students cannot be decided on the strength of the presence of the students on a particular day. Necessarily therefore the Respondents were not correct in saying that the classes were required to be closed down and that there could be the consequent cut in the grant which could be 25 % .

Therefore, in my opinion, the present petition requires to be recognised to the full extent and the rule requires to be made absolute. I hereby order accordingly. The rule shall stand made absolute. The orders in question are hereby quashed and set aside. The Respondent no.1 is directed to release 25 % withdrawn grant as early as possible, and preferably within a period of two months from the date of receipt of the writ of the present orders. Direct service permitted.

/vgn